IN THE HIGH COURT OF BOMBAY AT GOA

LETTERS PATENT APPEAL NO. 7 OF 2003

1. The Telecom District
   Manager, Goa, Mathias
   Plaza Building,
   Panaji, Goa - 403 001.

2. The Sub Divisional
   Officer, Telegraphs,
   Ponda, Goa. ... Appellants

versus

Shri Ashok Gaonkar,
r/o Talewada,
Bethora, Ponda,
Goa, 403 401. ... Respondent

Mr. V. P. Thali, Senior Central Government Standing Counsel with Ms. G. Pednekar, Advocate for the Appellants.

Mr. P. A. Kholkar, Advocate for the Respondent.

CORAM : SMT.NISHITA MHATRE &
P. V. HARDAS, JJ.

DATE : 4TH FEBRUARY, 2004.

ORAL JUDGMENT(PER SMT.NISHITA MHATRE,J.)

By this Letters Patent Appeal, the Appellants

challenge the Order of the learned Single Judge of this Court, granting reinstatement to the Respondent/workman. The learned Single Judge has also directed the Appellants to confer the status of permanency on the Respondent/workman and to reinstate him from 15th October, 2003, as a permanent workman. While doing so, the learned Single Judge has denied the Respondent/workman any back wages.

2. The Respondent/workman was employed as a casual Mazdoor with the Appellants. Although, the date of joining is disputed, the Industrial Tribunal and the learned Single Judge have found that, as a matter of fact, the Respondent/workman was in service from 1st April, 1988. On 1st November, 1989, the Respondent/workman was orally terminated from service. Despite several attempts made by the Respondent/workman to be reinstated, the Respondent/workman had to approach the Industrial Tribunal for redressal of his grievance. After raising an industrial dispute, a reference was made for adjudication before the Central Government Industrial Tribunal on 19th November, 1994. The reference made to the Tribunal was as to whether the action of the Appellants in stopping the Respondent/workman from service w.e.f. 1st November, 1989 was proper and justified; if not, to what relief the Respondent/workman was entitled to. The Tribunal

came to the conclusion that the action of the Appellants in stopping the Respondent/workman from service was proper and justified. Although the plea of abandonment of service, raised by the Appellants was not accepted by the Industrial Tribunal, it held that there was no need to comply with Section 25-F of the Industrial Disputes Act, 1947 as the Respondent had not completed 240 days in service. The Respondent/workman consequently filed a Writ Petition challenging the Award. While deciding the Writ Petition, the learned Single Judge came to the conclusion that by terminating the services of the Respondent/workman without complying with the provisions of Section 25-F of the Industrial Disputes Act, 1947, the Appellants had illegally terminated the services of the Respondent/workman as the Respondent had in fact worked for more than 240 days. The learned Single Judge then held that although, the normal relief of reinstatement of full back wages and continuity of services of the Respondent/workman had to follow once it was found that the services had been terminated illegally, the relief should be moulded appropriately. While doing so, the learned Single Judge directed the Appellants to reinstate the Respondent/workman "as a permanent workman in the category in which he was employed at the time of his termination". However, while doing so, the

learned Single Judge granted continuity of services from the first date of the employment of the Petitioner for the purpose of terminal benefits. The learned Single Judge denied back wages to the Respondent/workman. Aggrieved by this Judgment and Order, the present Letters Patent Appeal has been preferred.

3. The main contention of Mr. V. P. Thali, learned Counsel appearing for the Appellants is that although the action of the Appellants in terminating the services of the Respondent/workman may be illegal, he could not have been granted the relief of reinstatement as a permanent workman. He submits that in view of the scheme framed pursuant to the directions of the Apex Court, the Respondent/workman would not be entitled to permanency. The learned Counsel submits that since the Respondent/workman was employed as a casual Mazdoor in 1988, the scheme cannot be made applicable to him as it is made applicable to those who were employed prior to 30th March, 1985.

4. On the other hand, Mr. P. A. Kholkar, learned Counsel appearing for the Respondent has submitted that it is in lieu of the denial of back wages by the learned Single Judge, that the relief has

been moulded to grant the workman permanency.

5. We have perused the guidelines dated 7th June, 1990, framed by the Department of Telecommunication) granting temporary status to the casual Mazdoors. There is no doubt that these guidelines would not be applicable to the Respondent/workman as he had joined service as found as a matter of fact by the Tribunal some time in April,1988.

6. We have perused the Award as well as the Judgment of the learned Single Judge. The learned Single Judge rightly held that the termination of service of the Respondent/workman, without giving him notice or without complying with the provisions of Section 25-F of the Industrial Disputes Act, 1947 was illegal and that, therefore, the workman was entitled to reinstatement. We are not disturbing this finding of the learned Single Judge. However while granting reinstatement, the learned Single Judge could not have conferred the status of permanency on the Respondent/workman. The dispute raised by the Respondent/workman was under Section 2A read with Section 10(1)(d) of the Industrial Disputes Act, 1947 regarding reinstatement. The demand for permanency is

not a dispute which can be raised by an individual workman and, therefore, granting him such a relief was without jurisdiction.

7. We are, therefore, of the view that the Respondent/workman would be entitled to reinstatement in the post where he was working when his services were terminated on 1st November, 1989. The Respondent/workman would also be entitled to continuity of service from that date for all purposes. Over 14 years have passed since the Respondent/workman has been out of employment. It is improbable that the Respondent/workman would have been completely unemployed for this entire period. Moreover, although the services of the Respondent/workman were terminated in 1989, an industrial dispute was raised by him only on 21st September, 1992, i.e. 3 years after his services were terminated. Taking all these factors into consideration, we are of the view that granting 50% of back wages would meet the ends of justice.

8. Accordingly, the Respondent/workman is entitled to reinstatement with continuity of services and 50% of back wages w.e.f. 1st November, 1989. We are informed that the Respondent/workman has already been reinstated in service. The Appellants shall pay

the back wages as directed within 12 weeks from today. In the event, the amount is not paid within 12 weeks from today, the amount shall carry interest at the rate of 12% per annum.

SMT.NISHITA MHATRE, J.

P. V. HARDAS, J.

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